

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 24078	}	Decision 1445
of Robert N. and Dolores A. Fortner		
to Appropriate from Dry Creek in		
El Dorado County.		

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DECISION APPROVING APPLICATION

BY THE BOARD:

Robert N. and Dolores A. Fortner having filed Application 24078 for a permit to appropriate unappropriated water; a protest having been received; the applicants and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 24078 is for a permit to appropriate 1.5 acre-feet per annum by storage to be collected from November 15 of each year to March 15 of the succeeding year for stockwatering, recreation, and fire protection purposes from Dry Creek in El Dorado County. The point of diversion is to be located within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$ , Section 28, T10N, R10E, MDB&M.

### Applicants' Project

2. The applicants propose to construct an earth dam in the channel of Dry Creek which will form a reservoir with a capacity of 1.5 acre-feet. The water stored in the reservoir will be used for the watering of 50 head of cattle, boating, swimming, fishing and for fire protection.

### Protests

3. Application 24078 was protested by Beverly O. Brace. He diverts from Dry Creek approximately three miles downstream from the applicants' dam site for the irrigation of 80 acres of pasture under claim of riparian right. He commences irrigation some time in March or April, when the winter flows subside and he is able to install flashboards, and finishes some time in June when Dry Creek is usually dry.

### Availability of Water

4. There are no records of the flows of Dry Creek. The USGS "Shingle Springs" 7½ minute quadrangle indicates that Dry Creek is an intermittent stream from above the applicants' dam site to about a mile downstream, where it joins Slate Creek. During the winters of 1972 and 1973 the applicants observed large quantities of storm runoff entering their property from the direction of a new highway, and during those years Dry Creek was flowing throughout the month of June. The applicants anticipate, and the available evidence points to the conclusion that,

the small reservoir they propose to construct will fill during the first major storm of the year.

#### Existence of Unappropriated Water

5. As the protestant's diversion season will not be the same as the applicants' storage season, except for a portion of the month of March in some years, approval of Application 24078 should not result in harm to him. The high flows that will be captured by the applicants' reservoir are now going to waste.

Unappropriated water is available to supply the applicants, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

6. The intended use is beneficial.

#### Environmental Considerations

7. All environmental reviews required in compliance with the California Environmental Quality Act of 1970 have been completed.

From the foregoing findings, the Board concludes that Application 24078 should be approved and that a permit should be issued to the applicants subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 24078 and all relevant information on file therewith, particularly the report of a field investigation made on October 2, 1973.

ORDER

IT IS HEREBY ORDERED that Application 24078 be approved and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 1.5 acre-feet per annum by storage to be collected from November 15 of each year to March 15 of the succeeding year.

This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any other purpose.

2. The amount authorized for appropriation may be reduced in the license if investigation warrants.

3. After the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water beneficially used and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season.

4. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

5. Said construction work shall be completed on or before December 1, 1978.

6. Complete application of the water to the proposed use shall be made on or before December 1, 1979.

7. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

8. All rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against

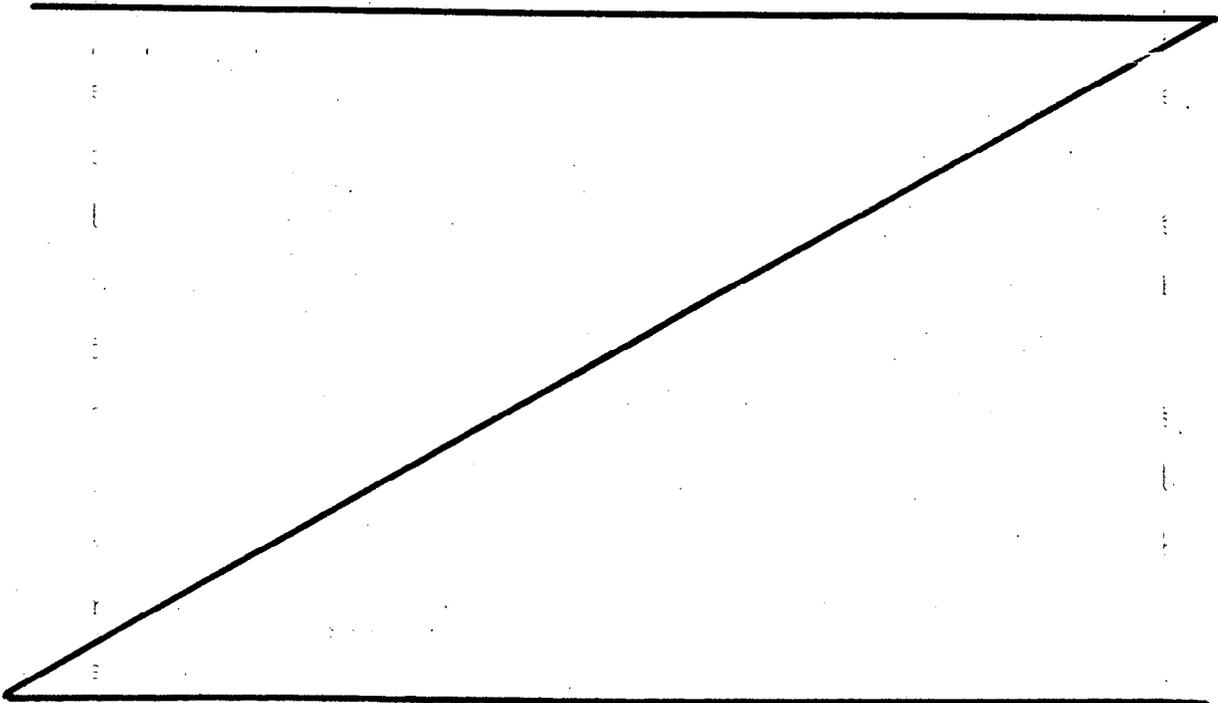
reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

9. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

11. Permittee shall, when required by the State Water Resources Control Board, install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir which is not authorized for appropriation under this permit may be released.

12. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.



13. This permit is subject to the continuing authority of the State Water Resources Control Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized uses. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.

Dated: January 16, 1975

W.W. ADAMS  
W. W. Adams, Chairman

RONALD B. ROBIE  
Ronald B. Robie, Vice Chairman

ROY E. DODSON  
Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER  
Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN  
W. Don Maughan, Member